

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID MARTIN
Claimant

APPEAL 22A-UI-05451-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO COUNCIL BLUFFS
Employer

**OC: 01/16/22
Claimant: Appellant (6)**

Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 17A.12(3) - Default Decision
Iowa Admin. Code r. 871-26.14(7) - Dismissal of Appeal on Default

STATEMENT OF THE CASE:

Claimant/appellant, David Martin, filed an appeal from the February 21, 2022, (reference 02) unemployment insurance decision that denied benefits, finding he was discharged 01/15/22 for excessive absences from his work area without proper authorization. After proper notice, a telephone hearing was conducted on April 12, 2022. The Appeals Bureau's conference call system indicates claimant/appellant, failed to call into the hearing and did not participate. Employer, Ameristar Casino Council Bluffs, participated through, Tom Durso, party representative, and Tammy Bennman, human resources business partner. Judicial notice was taken of the administrative record.

ISSUE:

Should the appeal be dismissed based on the appellant's failure to appear and participate?

FINDINGS OF FACT:

Having reviewed the evidence and the record, the undersigned finds:

The hearing notice instruction specifically advises parties of the date and time of hearing. It also states:

IMPORTANT NOTICE!

YOU MUST CALL the toll-free number: **866-783-7021** at the time of the hearing. When instructed, enter the PIN Number **105451** followed by the pound key [#] and wait for the administrative law judge to begin the hearing.

The administrative law judge **WILL NOT** call you for the hearing, you **MUST** call into the number provided above to participate. **Failure to participate in the hearing may result in the dismissal of your appeal.**

The back page of the hearing notice provides further hearing instructions stating, "You must call the toll-free number on the front of this notice at the time of the hearing to participate." This information also appears on the hearing notice in Spanish.

An insert was sent along with the hearing notice stating:

ATTENTION!

Instructions for participating in a hearing have changed.

Please review the enclosed hearing notice carefully and follow the instructions on how to join the call on the scheduled day and time of the hearing.

As a courtesy to the appellant, the record was left open for a minimum of 15 minutes after the hearing start time to give the appellant a reasonable opportunity to participate. Holding the appellant in default for failure to appear and participate during a 15-minute window after the hearing start time is reasonable considering the time allocated for unemployment hearings.

The representative's decision remains in effect.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

Iowa Admin. Code r. 871-26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing under subrule 26.8(3) and shows good cause for reopening the hearing.

Due process requires notice and an opportunity to be heard, both of which were provided to the parties. The appellant is responsible for going forward with the case in a prompt and thoughtful manner. The appellant must be present at the start of the hearing to avoid a default judgement. Iowa Code § 17A.12(3) and Iowa Admin. Code r. 26.14(7). The hearing notice instructs the parties to read the hearing notice; call the toll-free number at the time of the hearing and wait for the judge; the judge will not call you; and failure to participate may result in the dismissal of your appeal.

The Iowa Supreme Court has held a default should not be set aside due to the appellant's negligence, carelessness, or inattention. See *Houlihan v. Emp't Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996). Similarly, a default should not be set aside because the appellant has ignored clear requirements in the rules. Rather, a party must show it intended to proceed with the appeal and took steps to do so, but failed to appear because of some misunderstanding, accident, mistake or excusable neglect. Employer/appellant was not present at the start of the hearing. As a *curtesy*, employer was granted additional time not required by statute or rule. The representative's decision remains in force and effect.

If the appellant disagrees with this decision, the appellant may appeal the decision directly to the Employment Appeal Board, whose address is listed at the top right caption.

DECISION:

The February 21, 2022, (reference 02) unemployment insurance decision denying benefits remains in effect as the appellant is in default and the appeal is **DISMISSED**. Benefits are withheld until such time as they have worked in and been paid wages for insured work equal to ten times their weekly benefit amount, provided they are otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

April 15, 2022
Decision Dated and Mailed

dh/scn